



U.S. Department of Justice

Immigration and Naturalization Service

A

PUBLIC COPY

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



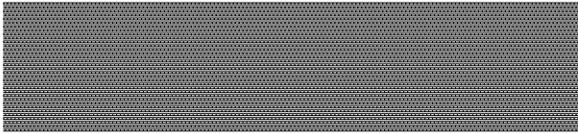
FILE:  Office: Texas Service Center

Date: **FEB 29 2000**

IN RE: Applicant: 

APPLICATION: Application for Adjustment of Status to Permanent Residence Pursuant to Section 245 of the Immigration and Nationality Act, 8 U.S.C. 1255

IN BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


For Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center, who certified his decision to the Associate Commissioner, Examinations, for review. The director's decision was withdrawn and the case was remanded for further action. The director has again denied the application and certified his decision to the Associate Commissioner for review. The director's decision will be affirmed.

The applicant is a native and citizen of [REDACTED] who is seeking to adjust his status to that of a lawful permanent resident under section 245 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1255.

The director originally denied the application for adjustment of status on August 18, 1998 because the Form I-140 Immigrant Petition for Alien Worker, approved by the Service on June 18, 1997, had been revoked.

The applicant, in response to the notice of certification, claimed that he timely submitted additional evidence after receiving the notice of intent to revoke the Form I-140 petition. He submitted evidence to establish his claim. Therefore, on October 28, 1998, the Associate Commissioner remanded the case to the director in order that he may include the documents in the record of proceeding and to then render a full adjudication of the application.

On May 17, 1999, the director reopened the case and subsequently denied the Form I-140 after determining that the evidence in the record, including the evidence furnished in response to his request for additional evidence on December 7, 1998, was insufficient to establish that the beneficiary meets the qualification of executive as defined in 8 C.F.R. 204.5(j)(2), or that he fits the perimeters of section 203(b)(1)(C) of the Act.

Based on the above findings, the director again denied the application for adjustment of status and certified his decision to the Associate Commissioner on June 9, 1999.

The Form I-140 petition was revoked, reopened, and ultimately denied by the director on May 17, 1999. The applicant is not the beneficiary of an approved visa petition upon which to base the application for adjustment of status. Therefore, he is ineligible for adjustment of status to permanent resident pursuant to section 245 of the Act.



Pursuant to section 291 of the Immigration and Nationality Act, 8 U.S.C. 1361, the burden of proof is upon the applicant to establish that he is eligible for adjustment of status. He has failed to meet that burden. Therefore, the decision of the director to deny the application will be affirmed.

ORDER: The director's decision dated June 9, 1999 is affirmed.

*identification data deleted to
prevent clearly unwarranted
invasion of personal privacy*